

In the High Court of Judicature at Madras

Dated: 12.01.2007

Coram:

The Honourable Mr.Justice P.SATHASIVAM

and

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.898 of 2007
and M.P.No.1 of 2007

K.Parvathi

...Petitioner

...vs...

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003.

2. The Assistant Executive Engineer,
Zonal Office-VIII,
Unit No.22,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records in pursuance of the demolition notice vide No.0401-2007 dated 03.01.2007 in respect of the property bearing old door No.151, New No.24, Alwarpet, Chennai-18 issued by the Deputy Commissioner, Corporation of Chennai, Rippon Buildings, Chennai-3 and quash the same.

For Petitioner : Mr.P.Subba Reddy

For Respondents : Mr.G.T.Subramanian

ORDER

(Order of the Court was made by P.SATHASIVAM, J.,)

The petitioner, aggrieved by the demolition notice dated 03.01.2007 in respect of her property bearing old Door No.151, New No.24, Alwarpet, Chennai-18, issued by the Deputy Commissioner, Corporation of Chennai, has filed the above writ petition to quash the same on various grounds.

2. According to the petitioner, she is living in the house constructed in an area of 1500 sq.ft.having ground and first floor. She constructed a house, after obtaining proper permission by way of sanctioned plan from the respondents on 30.01.2006 and residing therein. Her neighbour one Mr.Leenas, who is residing behind her building, initially demanded to sell her property to him. However, she was not inclined to his request; due to which, a complaint was made by him to the respondents to demolish unauthorised construction put up by her. It is further stated that at the time of construction of her premises, the respondents inspected the same and they did not find any deviation. While so, the respondents have issued a demolition notice dated 13.07.2006 without mentioning the deviation from the original sanctioned plan. They also issued another demolition notice on 07.08.2006, which was challenged by her by way of Writ Petition in W.P.No.30297 of 2006. After finding that the details of deviation have not been mentioned, the impugned demolition notice was set aside on 02.09.2006 and liberty was afforded to the respondents to issue fresh notice and proceed further in accordance with law.

3. It is her further grievance that even after the direction of this Court, the respondents have not indicated the deviations from the original sanctioned plan and she was not given an opportunity to explain her grievance before the respondents. The respondents once again issued demolition notice on 20.11.2006 on the same line of the earlier notice without indicating any deviation. Subsequent to the said notice, the respondents issued another demolition notice on 03.01.2007, which was received by her on 06.01.2007. In this notice also, the respondents have not indicated specific deviation. In such circumstance, the petitioner filed the above writ petition.

4. Pursuant to the notice issued by this Court, learned counsel appearing for the respondents received instructions from them.

5. Heard the learned counsel for the petitioner as well as respondents.

6. It is not in dispute that by order dated 02.09.2006, by pointing out that there is no reference to the details of deviations in the demolition notice, this Court set aside the said notice and granted liberty to the respondents to proceed afresh, after affording opportunity

to the petitioner. Pursuant to the notice, it is true that the officer concerned in Zonal Office-VIII issued a notice dated 20.11.2006 mentioning details regarding violations in the ground floor. The said order does not refer even the provisional order as well as the date on which the same was issued. Further, it is only a notice to stop the construction work and there is no specific direction for demolition. According to the petitioner, on receipt of the above notice, she sent a legal notice through her counsel on 25.11.2006 disputing the details furnished in the notice dated 20.11.2006. The said legal notice was followed by telegram dated 25.11.2006. On receipt of the legal notice and the telegram dated 25.11.2006, the respondents have issued the impugned notice dated 03.01.2007.

7. We have already referred to the earlier notices, defects therein, order of this Court and further notice by the respondents pointing out certain deviations, legal notice and telegram by the petitioner, highlighting her grievance in the earlier part of our Order. In spite of the above mentioned details / order, the 1st respondent has passed the impugned notice without reference to any of the above mentioned proceedings. We are not underestimating the power of the respondents in taking action against the persons, who violate the rules or sanctioned plan. However, when a person concerned disputes the correctness of the decision or conclusion arrived at by the officer by placing materials, it is but proper on the part of the respondents to afford further opportunity, verify the same and pass a speaking order mentioning all the events. As pointed out earlier, the impugned notice does not contain any details as mentioned above. In such circumstance, this Court has no other option except to quash the notice dated 03.01.2007.

8. Accordingly, the impugned notice dated 03.01.2007 is quashed. As observed earlier, the respondents are free to pass fresh orders after considering the legal notice and telegram sent by the petitioner as well as affording opportunity of being heard.

With the above observation, the writ petition is allowed. No costs. Consequently, M.P.No.1 of 2007 is closed.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003.

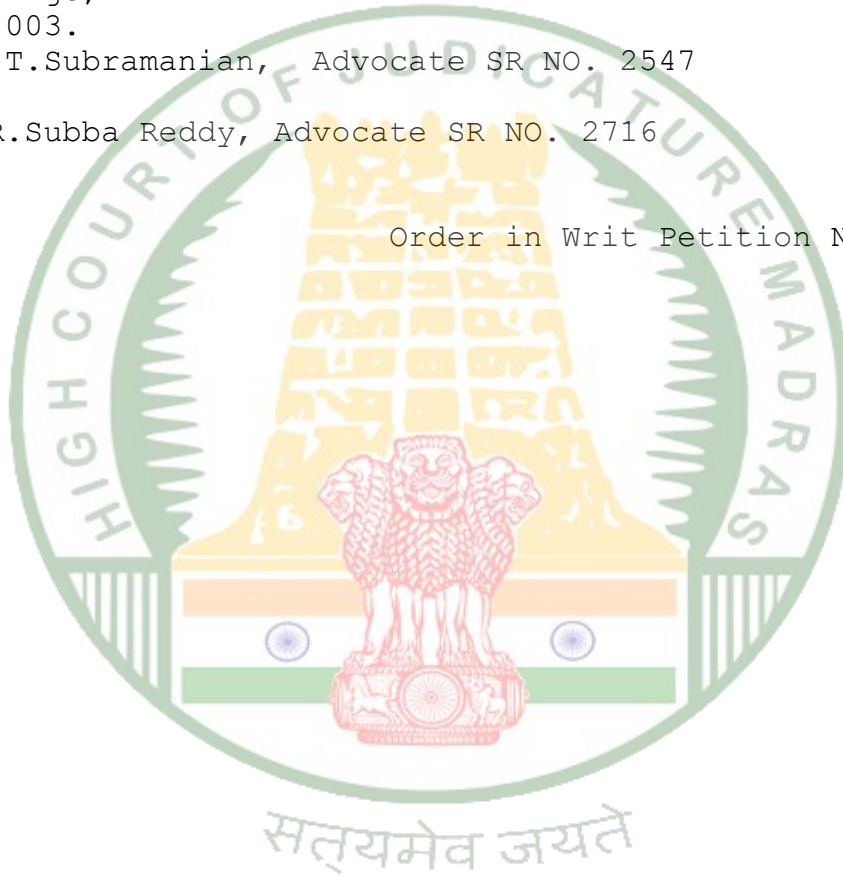
2. The Assistant Executive Engineer,
Zonal Office-VIII,
Unit No.22,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003.

+ 1 CC To Mr.G.T.Subramanian, Advocate SR NO. 2547

+ 1 CC To Mr. R.Subba Reddy, Advocate SR NO. 2716

Order in Writ Petition No.898 of 2007

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